

Application No. 09/922,851  
Amendment dated July 30, 2008  
Reply to Office Action of February 1, 2008

### **REMARKS**

Applicant cancelled claims 16-18 without prejudice or disclaimer of their subject matter and amended independent claims 1 and 41 and dependent claim 14 to further define Applicant's claimed invention. Support for the amendment to independent claims 1 and 41 can be found at least in the paragraph bridging pages 9 and 10 of the present application and further on page 7, lines 3-15 of U.S. Application No. 09/921,100, and on page 4, lines 9-21 of U.S. Application No. 09/921,107, the disclosures of which are incorporated by reference in the present application. Applicant amended the specification to include the portions of subject matter previously incorporated by reference from Application Nos. 09/921,100 and 09/921,107. No new matter has been added.

In the Office Action, the Examiner rejected claims 1-22 and 41-49 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,226,618 to Downs et al. ("Downs") in view of U.S. Patent No. 6,718,551 to Swix et al. ("Swix").

In KSR International Co. v. Teleflex Inc. et al., the Supreme Court reaffirmed the framework for governing obviousness under 35 U.S.C. § 103(a) as set forth in Graham et al. v. John Deere Co. of Kansas City et al., 383 U.S. 1, 148 U.S.P.Q. 459 (1966). (See KSR v. Teleflex, 127 S.Ct. 1727 (2007).) Under Graham v. John Deere, the question of obviousness is resolved on the basis of factual determinations including (1) the scope and content of the prior art, (2) the differences between the claimed invention and the prior art, (3) the level of ordinary skill in the pertinent art, and (4) where in evidence, so-called secondary considerations. (See Graham v. John Deere, at 17-18, 148 U.S.P.Q. at 467.) However, even under Graham v. John Deere, a combination of references that does not teach or suggest each and every element of the claimed invention supports a finding of nonobviousness. Applicant submits that Downs and Swix when properly combined do not teach or suggest every element of Applicant's claimed invention.

Applicant amended independent claims 1 and 41 to recite that the subscriber management system has "at least one processor" and "a graphical user interface including input fields," "said processor and said graphical user interface adapted for permitting the operator to group individual consumers into at least the first and the second of the selected groupings based on at least one of a geographical location, a bit

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rate service, a service provider, and a contractual term, the first and the second of the selected groupings of the consumers receiving the first and the second rollouts, respectively." Neither Downs nor Swix teach such a system.

Downs teaches a system including a series of tools that "enable the Content Provider(s) 101 to prepare and securely package their Content 113" into Secure Containers (SCs) and that enable Electronic Digital Content Stores (EDCSs) to "extract Content 113 from these SC(s) to be used as input to building their service offering" to end users of the system. (Downs, col. 48, lines 37-39; col. 70, line 55 through col. 71, line 3.) In Downs, the rollouts by the EDCSs are not offered to different groups of end users, but are offered to all registered end-users of the system. The contents of rollouts by an EDCS in Downs are not targeted to different groups of system end users, but are directed at and available to all end users who log onto the EDCS's website, meet Content Use restrictions (*i.e.*, approved uses of content), and purchase the content. In Downs, the system permits end-users to register and become an authorized user. The system of Downs does not include a processor and a graphical user interface with input fields adapted for permitting the operator to group users based on at least one of a geographical location, a bit rate service, a service provider, and a contractual term as recited in independent claims 1 and 41.

Swix teaches that "the operation of the present invention comprises collecting subscriber viewing selections, organizing and analyzing the selection, determining a subscriber's customer profile and demographic group, and delivering an advertisement targeted to the demographic group." (Swix, col. 8, lines 4-8.) In Swix, "event data gathered by a network use tracking system can include such viewing events as a channel viewed, a switch to another channel, use of a VCR or other ancillary device, or invocation of an interactive application and subscriber commands given to the system during the application." (Swix, col. 3, lines 56-61.) Subscriber data can include information such as "address, employer, income level, favored manufacturers, banking habits, and products purchased through interactive television." (Swix, col. 8, lines 62-65.) In Swix, the profile processor "assigns a customer profile to the subscriber and matches the customer profile to a demographic group" by "analyzing the event data and the subscriber data." (Swix, col. 8, line 66 through col. 9, line 2.) Neither Downs nor Swix teaches a subscriber management

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system that includes a processor and a graphical user interface with input fields adapted for permitting the operator to group individual consumers into at least the first and second of the selected groupings based on at least one of a geographical location, a bit rate service, a service provider, and a contractual term as recited in independent claims 1 and 41.

Applicant submits that neither Downs nor Swix disclose or suggest all recitations of independent claims 1 and 41. It is submitted that even if Swix were combined with Downs as proposed by the Examiner, the combination would not disclose or suggest all of the recitations of independent claims 1 and 41.

Applicant submits that independent claims 1 and 41 are patentable and that dependent claims 2-15, 19-22, and 42-49 dependent from one of independent claims 1 and 41, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, Applicant submits that the claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1068.

Respectfully submitted,

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